

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 887

Short Title: Public Contracts/Public-Private Partnerships. (Public)

Sponsors: Representatives Moffitt, Hager, Murry, and W. Brawley (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Commerce and Job Development.

April 15, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW GOVERNMENTAL ENTITIES TO ENTER INTO AGREEMENTS
3 WITH PRIVATE DEVELOPERS FOR THE OPERATION AND DEVELOPMENT OF
4 FACILITIES AND INFRASTRUCTURE FOR PUBLIC PURPOSES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 8 of Chapter 143 of the General Statutes is amended by
7 adding a new section to read as follows:

8 "**§143-128.1A. Public-private partnerships.**

9 (a) Definitions. – The following definitions apply in this section:

- 10 (1) Development contract. – Any contract entered into by a governmental entity
11 and private developer under the provisions of this section.
12 (2) Governmental entity. – The State or any political subdivision of the State, or
13 any governing body, board, or employee thereof who is authorized by law to
14 award contracts.
15 (3) Private developer. – Any person who has entered into a development
16 contract with a governmental entity under the provisions of this section.
17 (4) Public-private project. – A capital improvement project undertaken by
18 governmental entity and a private developer under the provisions of this
19 section, and which is comprised of one or more buildings or other
20 improvements, including, but not limited to, paving, grading, utilities,
21 infrastructure, reconstruction, or repair and includes both public and private
22 facilities.

23 (b) If a governmental entity determines that it will benefit from participation in the
24 development of a public-private project, the governmental entity may acquire, construct, own,
25 lease as lessor or lessee, and operate or participate in the acquisition, construction, ownership,
26 leasing, and operation of a public-private project, or of specific facilities within such a project,
27 including the making of loans and grants from moneys lawfully available therefor. The
28 governmental entity may enter into binding contracts with one or more private developers with
29 respect to acquiring, constructing, owning, leasing, or operating such a project. The contract
30 shall, among other provisions, specify the following: (i) the property interest of the
31 governmental entity and all other participants in the development of the project; (ii) the
32 responsibilities of the governmental entity and all other participants in the development of the
33 project; and (iii) the responsibilities of the governmental entity and all other participants with
34 respect to financing of the project. The contract may be entered into before or after the
35 acquisition of any real property necessary to the public-private project and may apply to a



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1 public-private project developed on real property owned by the governmental entity prior to the
2 determination by the governing body of the governmental entity that the governmental entity
3 will benefit from participation in the public-private project.

4 (c) The contract between the governmental entity and the private developer or private
5 developers may provide that the private developer or private developers shall be responsible for
6 (i) construction of the entire public-private project; (ii) reconstruction or repair of the
7 public-private project or any part thereof subsequent to construction of the project; (iii)
8 construction of any addition to the public-private project; (iv) renovation of the public-private
9 project or any part thereof; or (v) purchase of apparatus, supplies, materials, or equipment for
10 the public-private project, whether during the initial equipping of the project or subsequent
11 thereto. Additionally, the contract between the governmental entity and the private developer or
12 private developers may provide that the governmental entity and the private developer or
13 private developers shall use the same contractor or contractors in constructing a portion of or
14 the entire public-private project. If so, the contract shall include any provisions the
15 governmental entity deems sufficient to assure that the public facility or facilities included in
16 the public-private project or added thereto are constructed, reconstructed, repaired, or
17 renovated, and the apparatus, supplies, materials, and equipment purchased for the public
18 facility or facilities included in the public-private project are purchased at a reasonable price.
19 The governmental entity shall require a private-developer to provide a payment bond for
20 construction work.

21 (d) The governmental entity may contract for the operation of any facility or facilities
22 included in a public-private project by any person, firm, or corporation, public or private.

23 (e) To assist in the financing of its share of a public-private project, the governmental
24 entity may apply for, accept, and expend funds from the federal or State government or any
25 other lawful source.

26 (f) The governmental entity shall determine its programming needs for the capital
27 improvement project to be constructed under this section. The governmental entity shall
28 advertise a notice for interested parties to submit qualifications in such form as the
29 governmental entity may require for possible selection as the private developer or private
30 developers in the public-private project in a newspaper having general circulation within the
31 county in which the governmental entity is located. Prior to submittal of qualifications, the
32 governmental entity shall make available, in such form as it deems appropriate, the
33 programming requirements for the public-private project. Qualifications submitted by
34 interested parties shall include, but not be limited to:

35 (1) Evidence of financial stability. Information identified in accordance with
36 G.S. 66-152(3) and G.S. 132-1.2 shall be exempt from disclosure under
37 Chapter 132 of the General Statutes.

38 (2) Experience with construction of similar projects.

39 (3) Licensure to undertake the actions necessary to accomplish the goals of the
40 public-private project.

41 (4) Listing of licensed contractors, licensed subcontractors, and licensed design
42 professionals whom the private developer proposes to use for the project's
43 design and construction team.

44 (5) Statement of availability to undertake the public-private project and
45 projected time line for project completion.

46 (6) Other information as the governmental entity, in its sole discretion, may
47 require.

48 (g) Based upon the qualifications package submitted by the private developers, along
49 with any other information as the governmental entity may require, the governmental entity
50 may select a private developer or private developers with whom to negotiate the terms and
51 conditions of a contract to perform the public-private project. The governmental entity shall

1 advertise the terms of the proposed contract to be entered into by the governmental entity in a
2 newspaper having general circulation within the county in which the governmental entity is
3 located at least 10 days prior to a regularly scheduled meeting at which the contract is to be
4 considered. The contract for the public-private partnership may only be considered at a regular
5 meeting of the governmental entity."

6 **SECTION 6.** This act is effective when it becomes law.